

**REMARKS**

**I. Status and Disposition of the Claims**

Claims 1-13, 15 and 16 are currently pending and stand rejected. Claim 14 was previously cancelled. By this Amendment, claims 1 and 3 have been amended to more particularly point out and distinctly claim what Applicant considers to be the invention. Support for the amendments can be found in the original specification and claims. See, for example, the publication of the present application U.S. Patent Application 2006/0263667 ("the '667 application") at paragraphs [0013], [0015], [0021], and [0024], as well as in Figures 2 and 3. Claims 15 and 16 are newly added. Support for the new claims can be found at paragraphs [0013], [0015], and [0021], and Figure 2.

No new matter has been introduced. Applicant respectfully requests reconsideration in view of the foregoing amendments and the following remarks.

**II. Rejections under 35 U.S.C. § 102**

Claims 1, 2, and 4 are rejected under 35 U.S.C. § 102(b) as being anticipated by Condeescu (WO 02/023645) for reasons of record. See Office Action at 2-4. Applicant disagrees for at least the reason that Condeescu fails to teach each and every element in claims 1, 2, and 4. For example, Condeescu fails to disclose that the cathode sheet or the anode sheet forms a cooling fluid passage with a corrugated conductive element. See claim 1, as amended.

The Examiner considers distributor plates 11 and 11' in Condeescu to be equivalent to the cathode sheet and the anode sheet. See Office Action at 2. The Examiner further points out that distributor plates 11 and 11' have fluid passage holes. However, Figures 2 and 8 in Condeescu show that distributor plates 11 and 11' do not

delimit a cooling fluid. Rather, the rectangular separator plates 12 and 12' "are interconnected in back-to-back relationship ..., whereby to form therebetween a plurality of adjacent cooling liquid channels 15." See Condeescu at 5, lines 9-16. In other words, the rectangular plates 12 and 12' form a cooling fluid passage between them. None of the distributor plates 11 or 11' form any part of the cooling fluid passage.

For at least this reason, Condeescu does not anticipate claim 1, or claims 2 and 4, which depend from claim 1. Applicant respectfully requests the withdrawal of the rejections.

### **III. Rejections under 35 U.S.C. § 103**

Claim 3 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Condeescu as applied to claims 1, 2, and 4 above, and further in view of Applicant's Admission of Prior Art (AAPA). See Office Action at 5-6. In particular, the Examiner asserts that "it would have been obvious to a person of ordinary skill in the art to flow a cooling fluid through the calibrated orifices in the separator plate." *Id.* However, Condeescu discloses that the holes in the perforated distributor plates 11 and 11' are used to introduce hydrogen or air. See Condeescu at page 5, lines 17-22. In addition, Condeescu already has separate cooling fluid channels 15 and does not disclose or suggest introducing cooling water into the hydrogen or oxygen channels. *Id.* The modification suggested by the Examiner are not supported by the cited references. For at least this reason, Applicant requests the withdrawal of the rejection to claim 3.

Claims 1 and 9-13 are rejected under 35 U.S.C. §103(a) as being unpatentable over Facci (WO 02/078112) in view of Condeescu. See Office Action at 6.

As explained in Section II, the distributor plates 11 and 11' in Condeescu do not border a cooling fluid passage. Therefore, the combination of Facci and Condeescu does not teach or suggest the claimed invention in claim 1 and all claims dependent therefrom. For at least this reason, Applicant respectfully requests the withdrawal of the rejections.

### **III. Allowable Subject Matter**

Applicant acknowledges and appreciates that claims 5-8 were indicated to contain allowable subject matter. See Office Action at 9. Applicant also notes that Examiner suggests that claims 5-8 should be rejected under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph. *Id.* However, the Office Action does not set forth reasons for any rejection under § 112, second paragraph, nor does Applicant believe that such a rejection is warranted in view of the language of claims 5-8. Applicant therefore respectfully requests clarification of the record.

**IV. Conclusion**

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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Dated: August 27, 2009

By:

A handwritten signature in black ink, appearing to read 'M. D. Sweet', written over a horizontal line.

Mark D. Sweet  
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